

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STEVEN FERDMAN,

Plaintiff,

- against -

ICONIX BRAND GROUP, INC. and MISSION MEDIA
USA, INC.

Defendants.

Docket No. 1:17-cv-04458

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff Steven Ferdman (“Ferdman” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Defendants Brand Group, Inc. (“Defendants”) and Mission Media USA, Inc. (“Mission” and together with Defendants “Defendants”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of seven copyrighted photographs of musician John Legend, owned and registered by Ferdman, a New York based professional photographer. Accordingly, Ferdman seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendants because Defendants reside in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Ferdman is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 201 West 72nd Street, Apt. 18E, New York, New York 10023.

6. Iconix is a foreign business corporation with a place of business at 1450 Broadway, 3rd Floor, New York, New York 10018. Upon information and belief, Iconix is registered with the New York Department of State, Division of Corporations to do business in the State of New York. At all times material hereto, Iconix has owned and operated a website at the following URL: www.Roc4Life.com (the “Website”).

7. Mission is a domestic business corporation with a place of business at 560 Broadway, New York, New York 10012. Upon information and belief, Mission is registered with the New York Department of State, Division of Corporations to do business in the State of New York.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photographs

8. On November 14, 2016, Ferdman photographed musician John Legend (the “Photographs”). True and correct copies of the Photographs are attached hereto as Exhibit A.

9. Ferdman is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with the United States Copyright Office and were given registration number VA 2-025-112.

B. Defendant's Infringing Activities

10. On or about November 15, 2016, Iconix ran an article on the Website entitled *ABOUT LAST NIGHT: JOHN LEGEND DEBUTS DARKNESS AND LIGHT AT SAMSUNG 837*. See www.roc4life.com/2016/11/15/john-legend-darkness-and-light. The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit B.

11. Defendants did not license the Photographs from Plaintiff for its article, nor did Defendants have Plaintiff's permission or consent to publish the Photographs on its Website.

12. Upon information Mission supplied the Photographs to Iconix through Cool Media, a media outlet that that supplies editorial content to publications for a fee.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANTS)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

14. Defendants infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Defendants is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the foregoing acts of infringement by Defendants have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

17. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendants willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendants be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendants profits, gains or advantages of any kind attributable to Defendants infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendants be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;

5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
March 26, 2018

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz

Richard P. Liebowitz

11 Sunrise Plaza, Suite 305

Valley Stream, New York 11580

Tel: (516) 233-1660

RL@LiebowitzLawFirm.com

Attorneys for Plaintiff Steven Ferdman